

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In re: Levaquin Products )  
Liability Litigation ) File No. 08-MDL-1943  
(ALL CASES) ) (JRT)  
 )  
 )  
 ) Minneapolis, Minnesota  
 ) January 22, 2014  
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BEFORE THE HONORABLE JOHN R. TUNHEIM  
UNITED STATES DISTRICT COURT JUDGE  
(STATUS CONFERENCE)

**APPEARANCES**

**For Plaintiffs:**

**ZIMMERMAN & REED**  
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**For Defendants:**

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**Telephonic  
Participants:**

**ADAM EVANS, ESQ.**  
**THOMAS KNIGHT, ESQ.**  
**WILLIAM BROSS, ESQ.**

**Court Reporter:**

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1 MR. WHIPPLE: Good afternoon. Douglas Whipple for  
2 plaintiff Martin Fannin.

3 MR. EVANS: Adam Evans for plaintiffs Sharon  
4 Chetwynd and Martha Gregory.

5 MR. BROSS: Your Honor, this is Bill Bross with  
6 Heninger Garrison Davis on behalf of plaintiffs.

7 THE COURT: All right. Anybody else? Okay.

8 Let's talk about where things are at. Who's going  
9 to start? Ms. Van Steenburgh?

10 MS. VAN STEENBURGH: Yes, Your Honor.

11 So we prepared an agenda today. And you will  
12 notice that I took off the total number of cases pending  
13 since it is a moving target. We'll just talk about what  
14 remains to be done.

15 The first order of business are the cases for  
16 remand. What we're going to do today is present you with  
17 numbers and then to the extent the Court desires, we can  
18 certainly prepare spreadsheets to provide you the  
19 jurisdictions as to where all these different cases would  
20 go, but I'm just going to provide numbers for you today.

21 With respect to the number of cases for remand, we  
22 have cases where there's been a stipulation for remand and  
23 cases where there will need to be an Order to Show Cause as  
24 to why the case should not be remanded. We have a total of  
25 41 remands, 10 of which are under stipulation or consent to

1 remand and 31 that would be listed on an Order to Show Cause  
2 as to why the case should not be remanded. And it's a  
3 variety of law firms. There's nothing in particular on one  
4 or another. It's just a whole variety of cases.

5 With respect to the cases that are subject to  
6 transfer under 1404, I'm happy to say there are zero that  
7 should go on an Order to Show Cause. We have all of the  
8 cases on a consent to transfer, and there are a total of 10  
9 that have been agreed to in terms of transfer. We are still  
10 talking to a couple of law firms and those couple may drop  
11 off, but that would appear to be the total number for  
12 transfer.

13 Then we have a couple of other proposed Orders to  
14 Show Cause to talk with the Court about. One is an Order to  
15 Show Cause where we have attempted to contact the other side  
16 and have never heard anything ever from them and so it's  
17 been months and months and months, and there are a total  
18 number of 11 cases on that list where we have never heard a  
19 response from the other side.

20 THE COURT: Is this a request for a response from  
21 the attorney?

22 MS. VAN STEENBURG: Yes. All of these people on  
23 this list -- and the pro ses are different -- these are all  
24 represented plaintiffs. And we have sent out, I would say,  
25 more than one request for a response. These are not ones

1 where we've sent out offers -- or maybe we did. We did send  
2 out offers, and we never got a response from them at all,  
3 not even we're thinking about it, we will get back to you.  
4 These are just 11 law firms where we've just heard nothing.

5 And then we have another group which we call the  
6 group where we have gotten something in response: either we  
7 received your offer, we're considering it; we want to make a  
8 counteroffer; you know, gotten some kind of response -- and  
9 there are a total of 24 on that list. However, all of those  
10 include offers that were made and nothing has ever happened.  
11 It's we're still thinking about it. And, in fact,  
12 Mr. Sylvester sent out an e-mail on Tuesday to all of those  
13 who had initially responded saying we're going in on  
14 Wednesday; what is the status; do you intend to respond; we  
15 would like to know where you are on this because the Court  
16 at our last status conference indicated that perhaps there'd  
17 be an Order to Show Cause saying if you don't respond at  
18 least within 30 days, your case may be dismissed. We heard  
19 from two law firms, both of which said oh, we think we may  
20 make a counteroffer, but it had been six months since we'd  
21 heard from them. So really we've heard nothing from the  
22 folks on that list. We would be happy to have them respond  
23 if there were an Order to Show Cause saying you need to  
24 respond in X number of days or your case goes away, but  
25 there are 24 on that particular list that we would propose

1 the Court entertain.

2 Then we move down to the pro se cases, and there  
3 are a total number of 32 cases that Mr. Goldser had  
4 indicated at our last status conference would be moving  
5 forward. And as the Court may recall, the Court had asked  
6 us to reach out to those pro se plaintiffs to advise them as  
7 to status and see if they wanted to resolve their cases. We  
8 have reached out to all of them; although, we are still  
9 waiting on a couple of ones. I'll tell you the procedure.  
10 We initially tried to contact people by phone if there was a  
11 phone number. If it were disconnected or had changed, we  
12 sent a letter advising them and inviting them to call our  
13 800 number if they wanted to find out the status and/or talk  
14 about possible resolution. And there are a few letters that  
15 went out this week, and we gave them until the 28th of  
16 January to respond. We have a few that are sitting out  
17 there. But I can give you the numbers as we have them  
18 today. We have settled four of the cases. The paperwork  
19 has gone out, and we will be resolving those cases. We have  
20 four more who are considering our offers, and we are waiting  
21 for a response, and we will follow up with them next week.  
22 We have six who have rejected our offers and would like to  
23 continue with their cases. And I will come back to those in  
24 a moment. We have five with whom we've left messages. We  
25 know we have a correct phone number, asked them to call us,

1 and we've not heard back. We will likely follow up with a  
2 letter to those five. We have two letters that went out on  
3 the 14th of January for which we've gotten no response. We  
4 have eight additional letters that went out last Tuesday,  
5 and we've given them until the 28th -- or asked them to  
6 respond by the 28th of January. We have one person in  
7 prison, and Mr. Goldser is working to get some contact  
8 information for him. And the last person is someone who  
9 we're working with who doesn't want a money settlement, he  
10 would like a study done. So we're going to have to figure  
11 out how we're going to resolve that, if at all.

12 I said I would come back to the six that had  
13 rejected the offers because I wanted to let the Court know  
14 that all of those cases were directly filed in Minnesota.  
15 So in thinking this through it's difficult because those  
16 individuals are not represented, so perhaps the easiest  
17 thing to do is for us to make a motion to transfer venue and  
18 they will get notice of that, and then the case -- I can't  
19 imagine that any of them -- none of them are from Minnesota.  
20 I find it highly unlikely that they want to prosecute their  
21 case in Minnesota without counsel, but I wanted to at least  
22 bring it to your attention and see if the best way to  
23 resolve that -- I can't give them legal advice and tell them  
24 one way or the other, so I wasn't quite sure, but I wanted  
25 to at least bring it to the Court's attention that those are

1 directly-filed cases and they will either have to pursue  
2 them here or they will have to be transferred. We certainly  
3 can give you that list of those cases.

4 So we're making progress with the pro se cases.  
5 And I would anticipate that we would have a few more. In  
6 fact, I got a call. Right before I came over here, I made a  
7 call. There was a filing that just happened today with a  
8 woman who gave a new address. We had sent her a letter to  
9 her old address. I tried calling her right before we came  
10 over and didn't get her. I think we will have a few people  
11 to work with in terms of the pro se plaintiffs.

12 With respect to the Carey Danis Lowe cases, they  
13 have all been resolved and we have no further work that will  
14 need to be done on those cases, other than, I believe, that  
15 some of the plaintiffs will no longer be represented and so  
16 you may get calls and/or I may get calls.

17 THE COURT: Oh, yeah, we're getting calls.

18 MS. VAN STEENBURGH: All right. Well, if you are  
19 getting calls, that probably means I will be getting some  
20 calls, too. I will be prepared for that, as well.

21 THE COURT: The nature of most of them are that  
22 this notice that their case has been dismissed voluntarily  
23 is the first notice they've heard of anything from the law  
24 firm.

25 MS. VAN STEENBURGH: Okay. Well --



1 THE COURT: We're starting to get calls. This is  
2 a letter that we just received, a person who seems to have  
3 had significant injury: ruptured tendons in both shoulders,  
4 through telephone conversations told matter had good merits,  
5 assurance that this is one of the best cases, and then a  
6 notice of the voluntary dismissal, and a reference to  
7 absolutely nothing being in the files.

8 MS. VAN STEENBURGH: As you were saying that, I  
9 think what is coming to my mind is that we need to have the  
10 Carey Danis & Lowe firm provide us with a list of all of  
11 those that should go on to their dismissal, settlement  
12 and/or other so that you don't get a deluge of contacts and  
13 calls and nor do we. So when I get back, I will contact  
14 Mr. Sullivan and make sure that's been properly taken care  
15 of.

16 THE COURT: It is starting to appear that they did  
17 absolutely nothing for any of these people. Obviously, that  
18 was suspected all along, but I do have some significant  
19 concerns about that. Some of them may be frivolous cases,  
20 of course, but people trying to get information and then  
21 being told that their lawyer has agreed to dismiss their  
22 case --

23 MS. VAN STEENBURGH: Yeah. With the number of  
24 cases there is some concern that a lot of them are going to  
25 be let go, whether they have been looked at or not. We

1 didn't have a lot of information on them either.

2 THE COURT: Yeah. And I suspect the problem in  
3 getting information is information hasn't been gotten from  
4 any of these people.

5 MS. VAN STEENBURGH: So I will follow up on that.

6 THE COURT: Okay.

7 MS. VAN STEENBURGH: Other than that --

8 Did you have something, Mr. Goldser?

9 MR. GOLDSER: Yeah, just a couple comments. Good  
10 afternoon, Your Honor.

11 THE COURT: Just for the record, the one that we  
12 had just received is a plaintiff named Bernard Jones. It  
13 was Court File 10-02747.

14 MS. VAN STEENBURGH: Thank you.

15 MR. GOLDSER: And working from the back forward,  
16 we are not getting calls from the former Carey Danis people,  
17 at least not to my knowledge. We've not gotten a lot of  
18 calls from plaintiffs. The ones that cross my radar screen  
19 are my clients, and they're few and far between. I get  
20 occasional calls from lawyers out there in the world  
21 wondering about, frankly, new cases, not really very much  
22 about the processing of any of these dismissals or Orders to  
23 Show Cause or anything. They are just not crossing my  
24 radar. I'm sorry they're coming to the Court's attention.  
25 I'm not seeing them.

1 THE COURT: Yeah, I don't think these people  
2 probably got any information about how to reach anybody.  
3 They knew which Court the case had been -- they had filed  
4 their transcript to.

5 MR. GOLDSER: That could well be, but people don't  
6 have a whole lot of trouble finding me as co-lead in the MDL  
7 when they go looking. So if they do their homework even  
8 minimally, they tend to find me. I'm not sure whether  
9 there's anything the Court would like me to do with these  
10 folks. I'm certainly not excited about undertaking  
11 representation, but I don't want the burden to fall on the  
12 Court.

13 THE COURT: Well, we need to -- I mean, some of  
14 these are likely to be cases that are worthy of settlement.  
15 But for the fact that the law firm didn't really do anything  
16 on their behalf, many of them are probably not. We have to  
17 devise some kind of process to make sure these people have  
18 been treated fairly. Many of them probably don't care; who  
19 knows. But there's an awfully long list that we -- not  
20 awfully long, but a long list that we dismissed by voluntary  
21 stipulation, dismissal without prejudice. And the list is  
22 about 142.

23 MR. GOLDSER: I take it somewhere along the line  
24 notice of that dismissal was given to all of those people.  
25 I mean, I don't know that, but I take it that's true. Do we

1 know?

2 THE COURT: I think that notice was sent to them  
3 of the Order For Voluntary Dismissal.

4 MR. GOLDSER: Okay. At least they know.

5 THE COURT: That's probably it.

6 MR. GOLDSER: At least they know, and that's  
7 important. And if they are then responding to that  
8 voluntary dismissal with I never knew about this, nobody has  
9 ever contacted me, I'm certainly troubled by that, of  
10 course.

11 I hate to put the burden back on defense counsel,  
12 but if they're resolvable cases -- if the one with the two  
13 shoulder tendon ruptures is a resolvable case, then I would  
14 imagine you'd want to resolve that one somewhere along the  
15 line. So that if there is somebody who comes forward in  
16 short order responding to the voluntary dismissal, you know,  
17 that's something that I would think would be re-openable  
18 under Rule 16 in some fashion or another.

19 THE COURT: Do we have other names of calls?  
20 Heather is the one who gets the calls.

21 COURTROOM DEPUTY: Yes, and I have been giving  
22 them Tracy's number. And I have given Ron's number to  
23 people.

24 MR. GOLDSER: Okay.

25 COURTROOM DEPUTY: They have generally been

1 looking for representation, and that's not something that  
2 you have been --

3 MR. GOLDSER: Well, we're not willing to undertake  
4 to represent them, but we'll certainly give them some basic  
5 information of where we are and what happens. As I say,  
6 they don't seem to be calling me. If they're calling Tracy,  
7 then they are.

8 COURTROOM DEPUTY: I've gotten a few calls.

9 MR. GOLDSER: Okay. I mean, we're happy to take  
10 them. We will work with Tracy and defense counsel to work  
11 through those issues. If it's black box cases, we  
12 understand what happens to them. That double tear shoulder  
13 may be a black box warning case for all we know.

14 THE COURT: Could be.

15 MS. VAN STEENBURGH: One thing we could do, Your  
16 Honor -- and the concern I have is a case like this that  
17 you've described, in many of the Carey Danis cases one of  
18 the reasons that they were dismissed is we never got any  
19 information. They kept moving and people didn't give us  
20 information.

21 THE COURT: Absolutely.

22 MS. VAN STEENBURGH: So it's hard to resolve  
23 cases.

24 I think having a list of what cases have been  
25 voluntarily dismissed, we can compare that to what we

1 actually got in terms of information from them and that will  
2 help us in many respects figure out whether we even have  
3 enough information to be able to pursue any of that. I will  
4 make sure that we get all of that gathered from  
5 Mr. Sullivan.

6 THE COURT: Why don't we -- I short circuited it  
7 with this guy's case because here's the material he sent.  
8 We can hand it down to you.

9 MR. GOLDSER: Again, I repeat, Your Honor, if  
10 there is something you would like from our side of the  
11 courtroom, we are more than happy to make sure this burden  
12 doesn't fall on you.

13 And along the same lines, as I wrote down some of  
14 the numbers, it appears that there are 20 cases that are  
15 stipulated and ready for either remand or transfer. I  
16 wonder if there is any reason to wait on doing those remands  
17 or transfers. Can we get those cases moving? Every once in  
18 a while I do hear from a plaintiff's lawyer who says when is  
19 my case coming back.

20 THE COURT: So we have ten in each category with  
21 the stipulations?

22 MS. VAN STEENBURGH: Correct.

23 THE COURT: We can do them in two separate orders  
24 right away if they're ready to go.

25 MS. VAN STEENBURGH: Okay.

1 MR. GOLDSER: And then there were three categories  
2 of Orders to Show Cause totalling 66 cases. Some of them  
3 were remand where there was no stipulation. Some of them  
4 were the Order to Show Cause, no response to an offer. And  
5 the other was the Order to Show Cause where there were  
6 responses out there. Is there any reason why we can't move  
7 forward on those Orders to Show Cause at least to get the  
8 clock running on those?

9 MS. VAN STEENBURGH: And that's one thing I forgot  
10 to mention. We were going to propose that right after the  
11 status conference we submit by the end of the week those  
12 Orders to Show Cause so we can get that rolling. Yes.

13 THE COURT: All right.

14 MR. GOLDSER: Part of my reason -- I'm certainly  
15 interested in moving these cases along, getting them off  
16 your docket, but, as you know, I'm looking towards a finish  
17 date of March 31st, and I would certainly like to see if we  
18 can't accomplish that. I suspect some of these Orders to  
19 Show Cause are going to roll over after that date, which is  
20 unfortunate, but as much as we can get done by March 31st, I  
21 would certainly like to see that we can do that.

22 On the pro se cases, the six that are direct filed  
23 that have rejected the proposals, those appear to be then  
24 necessary or ready for remand or -- no, they're not ready?

25 MS. VAN STEENBURGH: None of them are remand

1 cases.

2 MR. GOLDSER: They are all transfer cases. So  
3 motions will be made. Of those six, as I understand it,  
4 four of them are my clients and I presume, although I  
5 haven't checked, that we have motions to withdraw on those  
6 four. I would think at this point those four motions would  
7 be ripe for the Court to rule on. The names, as I  
8 understand it, are Robert Harrington (sic) --

9 MS. VAN STEENBURGH: Arrington.

10 MR. GOLDSER: Arrington, Stephanie Johnson --

11 MS. VAN STEENBURGH: I can provide the Court file  
12 numbers if you need them.

13 MR. GOLDSER: -- Joyce Sams, and Tracy Whiteside.  
14 If the Court please, I would like to have the motions to  
15 withdraw on those taken care of. I don't know who the other  
16 two are on that list. And that's all.

17 THE COURT: So we have on these a clear rejection.  
18 And any expression of what they intend to do next? They  
19 want more money or what's the --

20 MS. VAN STEENBURGH: No, they want to go forward.  
21 All of them have said that they would like to go forward  
22 with their case. I'm just looking at my notes. I didn't  
23 talk to Mr. Arrington, but he said he wanted to go forward.

24 Right?

25 MR. SYLVESTER: Correct.



1 MS. VAN STEENBURGH: Right now they want to move  
2 forward with their cases.

3 THE COURT: And they are all located elsewhere?

4 MS. VAN STEENBURGH: Yes. Mr. Bross on the phone  
5 is Ms. Walsh, I think was a case that was a Henninger case;  
6 and then Mr. Steele, Darryl Steele. Magistrate Judge Boylan  
7 and I tried to resolve the case, and he wanted to keep going  
8 forward with that case. Otherwise, yeah.

9 THE COURT: Okay. Well, and I'll need to know  
10 where to transfer them to.

11 MS. VAN STEENBURGH: I'll get you that, too.

12 THE COURT: Okay.

13 MR. GOLDSER: Those are all the comments that I  
14 have about those cases, Your Honor.

15 THE COURT: All right. Anything else we need to  
16 go over today?

17 MR. GOLDSER: The only other thing I'd like to  
18 call to your attention you have probably seen, is that the  
19 second *Schedin* appeal has been decided by the Court of  
20 Appeals. You were affirmed. I'm pleased to say that. I  
21 know that Mr. Fitzgerald is working with Mr. Schedin on  
22 getting that resolved and Ms. Van Steenburgh on getting that  
23 resolved, but that case also looks like it's coming to a  
24 conclusion. That was the bellwether *Schedin* case.

25 THE COURT: Sure. All right. Anything else we

1 should discuss today?

2 MS. VAN STEENBURGH: I have nothing else on my  
3 agenda, Your Honor, other than the next date that we meet.

4 THE COURT: Anyone on the phone have any issue to  
5 raise?

6 MALE SPEAKER: No, Your Honor.

7 MALE SPEAKER: No, Your Honor.

8 THE COURT: All right. Some time in February  
9 shall we get back together again? It seems wise to do this  
10 on a fairly regular basis so we can keep on top of all these  
11 odds and ends that we have left here. The last week in  
12 February is a week that has time on my schedule, the week  
13 beginning with the 24th.

14 MS. VAN STEENBURGH: Depending on the day --

15 THE COURT: What day are you free?

16 MS. VAN STEENBURGH: I'm free at the beginning of  
17 the week.

18 MR. GOLDSER: Tuesday the 24th (sic) does not work  
19 for me -- I'm sorry, Tuesday the 25th does not work. Monday  
20 the 24th does.

21 THE COURT: I'm scheduled to start a jury trial  
22 that day, but we certainly can do something later in the  
23 day.

24 MS. VAN STEENBURGH: That would work.

25 THE COURT: 4:00?

1 MR. GOLDSER: Sure.

2 THE COURT: We will set up the next status  
3 conference for 4:00 in the afternoon of February 24th.

4 All right. And I'll await the information so that  
5 we can remand 10 cases, and we can transfer 10 cases from  
6 the first two categories, and then the six who have rejected  
7 the settlements need to grant some motions to withdraw and  
8 to transfer those cases to an appropriate district to handle  
9 them. Okay?

10 MS. VAN STEENBURGH: Fair enough.

11 MR. GOLDSER: And the other 66 with the Orders to  
12 Show Cause, we will get those proposed orders as well?

13 THE COURT: Right. We will take care of that upon  
14 receipt.

15 All right. If there is nothing else, thank you  
16 everyone. We will be in recess.

17 COURTROOM DEPUTY: All rise.

18 (Court adjourned at 4:08 p.m.)

19 \* \* \*

20 I, Debra Beauvais, certify that the foregoing is a  
21 correct transcript from the record of proceedings in the  
22 above-entitled matter.

23 Certified by: s/Debra Beauvais  
24 Debra Beauvais, RPR-CRR

25